

**STATE OF RHODE ISLAND
DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES**

PUBLIC NOTICE OF PROPOSED RULE-MAKING

In accordance with Rhode Island General Law (RIGL) 42-35 and 42-72-5, notice is hereby given that the Department of Children, Youth and Families proposes to adopt the following DCYF rule:

MAJOR DISCIPLINE REVIEW

This new rule, in compliance with the federal court order relating to RI Training School residents and the accreditation standards of the American Correctional Association for Juvenile Training Schools and Juvenile Detention Facilities, outlines procedures for staff to use in responding to serious resident infractions or allegations of serious resident infractions of the RI Training School's rules.

In the development of this rule, consideration was given to the following: (1) alternative approaches and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information.

This proposed rule is accessible on the R.I. Secretary of State's website (<http://www.sec.state.ri.us/ProposedRules/>) and the DCYF website (<http://www.dcyf.ri.gov>) or available in hard copy upon request (401 528-3685). Interested persons should submit data, views or written comments by April 5, 2010 Susan Bowler, Administrator for Families and Children, Department of Children, Youth and Families, 101 Friendship Street, Providence, RI 02903 (Susan.Bowler@dcyf.ri.gov).

In accordance with RIGL 42-35-3, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

Major Discipline Review

Rhode Island Department of Children, Youth and Families
Division of Juvenile Correctional Services: RI Training School

Policy: 1200.1306

Effective Date:

Version: 1

The Division maintains a safe and healthy environment at the Training School for residents and staff. The Major Discipline Review process responds to serious resident infractions or allegations of serious resident infractions of the facility's rules. Related procedure outlines the infractions subject to such review, the range of sanctions available, as well as regulations for conducting and documenting all processes related to Major Disciplines.

The Major Discipline Review process is conducted by the Major Discipline Reviewer, who remains impartial and ensures that each resident's right of due process is respected. The Superintendent can intervene in the Major Discipline Review process at any point and is available to hear a resident's appeal.

Staff are trained in a full range of behavior management and progressive discipline techniques to reduce the occurrence of major disciplinary infractions. Residents are informed of the rules of the facility so that they can avoid such infractions.

Related Procedures

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Related Policies

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General Discipline

Discipline for Academic and Vocational Classes

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Administrative Classification to Restrictive Status

Lock Up

Crisis Intervention and the Use of Restraint

Searches for Contraband

Resident Conduct Subject to Major Discipline Review

Procedure from Policy 1200.1306: Major Discipline Review

- A. Residents demonstrating the following behaviors may be subject to Major Discipline Review:
1. Bullying or extortion;
 2. Refusing work assignments without good cause;
 3. Physical assaults on other residents or staff;
 4. Elopement;
 5. Failure to return from an authorized home visit;
 6. Destruction of property;
 7. Theft;
 8. Possession, use of, or selling drugs and/or contraband (which is anything illegal or anything that is specifically prohibited by DCYF Policy 1200.0821, Searches for Contraband);
 9. Failure to obey any reasonable and lawful staff command (including refusal to continue participation in any court mandated treatment, rehabilitation, or training programs that are established in the resident's Service Plan (Individual Treatment Plan), or educational programs in which attendance is mandated by the compulsory school attendance laws);
 10. Using threatening language that would cause a reasonable person to be in fear of imminent physical harm;
 11. Using gestures that are intended to provoke other residents and/or staff and would cause a reasonable person to be provoked and;
 12. Any act in violation of the criminal laws of the State of Rhode Island.
- B. Written rules of juvenile conduct are described in and distributed to residents in conformance with DCYF Policy 1200.1301, Resident Handbook.
- C. Paragraphs A and B are consistent with American Correctional Association Standards 3-JDF-3C-02; 3-JTS-3C-02; 3-JDF-3C-03 and 3-JTS-3C-03.

Major Discipline Reviewer

Procedure from Policy 1200.1306: Major Discipline Review

- A. The Department of Children, Youth, and Families appoints an employee of the Department, whose responsibilities do not involve any duties not related to the operation of the discipline system at the Training School, to serve as the Major Discipline Reviewer. The Major Discipline Reviewer works with staff and residents to ensure the fair, efficient and effective operation of the Training School's discipline system.
- B. The Major Discipline Reviewer conducts all Major Discipline Reviews in accordance with this policy and procedure and is not consulted regarding a disciplinary matter prior to the review process regarding that matter.
- C. The Major Discipline Reviewer is responsible for ensuring that if residents at the Training School are placed on Restrictive Status, all elements of that status comply with DCYF Policy 1200.1308, Administrative Classification to Restrictive Status. The Major Discipline Reviewer is also responsible for all required documentation of this status.
- D. The Major Discipline Reviewer compiles reports on the operation of the discipline system at the Training School and forwards such reports to the Superintendent and/or designee.
- E. Paragraphs A and B are consistent with American Correctional Association Standards 3-JDF-3C-14 and 3-JTS 3C-16.

Initial Process of Major Discipline Review

Procedure from Policy 1200.1306: Major Discipline Review

- A. The Unit Manager or designee verbally informs the resident that his/her infraction is being recommended for a Major Discipline Review.
- B. Staff promptly notify the Shift Coordinator of this recommendation. The Shift Coordinator immediately notifies the Superintendent or designee of the details of the incident.
- C. The Superintendent or designee approves or disapproves the recommendation for a Major Discipline Review. If the Superintendent determines that a Major Discipline Review is warranted, the Shift Coordinator notifies the staff who submitted the request.
- D. Paragraphs A - C are consistent with American Correctional Association (ACA) Standards 3-JDF-3C-12 and 3-JTS-3C-12.
- E. Staff notify the resident that a Major Discipline Review Board has been approved. The resident is entitled to timely written notice of the violation with which he/she is charged, the alleged conduct giving rise to the violation, including the date, time and place of the alleged conduct and reason for the proposed disciplinary procedure. This notice will be given as soon as possible but no later than the end of the shift in which the incident occurred unless the Superintendent approves an extension of that time frame.
 - 1. This notice procedure shall be accomplished by giving the resident a copy of the Discipline Report Part 1 which includes the information in paragraph E above.
 - 2. The Major Discipline Reviewer or designee also gives the resident notice of the time and place of the Review on the alleged conduct and of his/her right to be represented by a counselor, social worker or another resident of the resident's choosing. The resident also will be informed at that time that he/she may retain a lawyer at his/her own expense to represent him/her before the Board.
 - 3. Paragraph E is consistent with ACA Standards 3-JDF-3C-10; 3-JTS-3C-10; 3-JTS-3C-11; 3-JDF-3C-12 and 3-JTS-3C-14.
- F. In all cases the resident receives a copy of the Discipline Report Part 1 prior to the Major Discipline Review Hearing. Paragraph F is consistent with ACA Standards 3-JDF-3C-10; 3-JTS-3C-10; 3-JTS-3C-11; 3-JDF-3C-12 and 3-JTS-3C-14.
- G. If the Superintendent determines the resident is at risk for imminent harm to him/herself or others, the resident may be remanded to his/her room while maintaining all other basic entitlements in accordance with DCYF Policy 1200.1307, Lock Up. Paragraph G is consistent with ACA Standards 3-JDF-3C-11; 3-JTS-3C-13; 3-JDF-3C-07 and 3-JTS-3C-07.
- H. In any instance in which a resident is remanded to his room prior to the hearing, the Review Board must occur within twenty-four hours of the incident unless the resident requests an extension to allow his/her attorney to be present at the hearing. Paragraph H is consistent with ACA Standards 3-JDF-3C-11 and 3-JTS-3C-13.
- I. If there is no indication that the resident is at risk of imminent harm to him/herself or others, the Review Board hearing must occur with five (5) work days of the incident. No extension to the 5-day policy may occur unless the resident or his/her attorney requests it. The Major Discipline Reviewer approves requests for extensions. Paragraph I is consistent with ACA Standards 3-JDF-3C-13 and 3-JTS-3C-15.
- J. If, during the period prior to the convening of the Review, the Unit Manager consults with the Superintendent or designee and determines that the alleged infraction may appropriately be addressed through a Behavior Report, DCYF Policy 1200.1305, Behavior Report is implemented

and the Major Discipline Review procedure is discontinued. Paragraph J is consistent with ACA Standards 3-JDF-3C-02 and 3-JTS-3C-02.

Major Discipline Review Hearing

Procedure from Policy 1200.1306: Major Discipline Review

- A. At the hearing the Major Discipline Reviewer reads and fully explains to the resident and his/her advocate the circumstances of the charge and/or reason for the Review. The Reviewer also informs the resident of his/her right to:
1. Be represented by an attorney, a social worker, another resident of his/her choosing or another community member or staff member of his/her choosing.
 2. Retain or use an attorney to represent them at his/her own expense.
 3. Admit, deny or remain silent regarding the stated charge(s).
 4. Privately make an initial statement to admit or deny the charges to the Reviewer in the absence of witnesses and/or staff the resident or his/her advocate.
 5. Disclosure of the evidence that will be presented against him/her during the Review hearing.
 6. Present evidence on his/her behalf that includes witnesses and documentation.
 7. Have all witnesses questioned in the presence of the resident. If the Reviewer finds that such questioning will jeopardize the physical safety of the witness, that witness may testify out of the presence of the resident, but in the presence of the resident's advocate when applicable.
 8. Testify (although the resident is not required to do so). In all cases, the resident shall be advised that if she/he wishes to testify, anything she/he says may be considered by the Major Discipline Reviewer as well as in future court proceedings, if any. The reviewer does not consider the resident's decision not to testify as an admission or indication of guilt or wrongdoing.
 9. Cross-examine any witnesses that the resident does not present. The resident can also compel the presence of staff or other residents as witnesses by requiring that the Superintendent or designee require their presence at the hearing.
 10. The right to appeal the Review decisions and/or the imposed penalty to the Superintendent. All sanctions are suspended pending the outcome of the appeal.
 11. Paragraph A is consistent with American Correctional Association (ACA) Standards 3-JDF-3C-14; 3-JTS-3C-16; 3-JDF-3C-15; 3-JTS-3C-17; 3-JDF-3C-16; 3-JTS-3C-18; 3-JDF-3C-17; 3-JTS-3C-19 and 3-JTS-3C-20.
- B. All witnesses testify only in the presence of the Major Discipline Reviewer, the resident and the resident's advocate unless the Major Discipline Reviewer determines that such testimony jeopardizes the safety of the witness. Paragraph B is consistent with ACA Standards 3-JDF-3C-15 and 3-JTS-3C-17.
- C. The Reviewer may exclude evidence that is cumulative or presented solely to harass or delay the Review.
- D. The Reviewer's decision is based solely on information obtained during the hearing process; the burden of proof is on the Division to demonstrate by clear and convincing evidence that the resident violated the rules of behavior. Paragraph D is consistent with ACA Standard 3-JTS-3C-20.
- E. The Reviewer submits the decision in writing no later than two (2) days after the close of the Review.
1. The decision includes a brief summary of the evidence presented at the Review, the evidence that supports the finding(s), and the reasons for the decision and penalty imposed.
 2. The decision affirms that the resident's disciplinary record was considered in arriving at the sanction as well as the manner in which the record review affected the imposed sanction.

3. The decision affirms that the resident's disciplinary history was not considered in determining guilt but only considered during the penalty phase of the Review.
 4. Paragraph E is consistent with ACA Standards 3-JDF-3C-18 and 3-JTS-3C-21.
- F. If the resident is found guilty of the charge(s) his/her record may be used to determine the sanctions to be imposed.
1. The sanctions are consistent with the requirement for progressive discipline.
 2. The resident's past discipline record is only considered after the Major Discipline reviewer determines that the resident is guilty of the charge(s). Further, the record can only be used to weigh the appropriateness of the sanctions.
 3. When the resident's prior discipline record is used to determine penalties, the Reviewer discusses this in the presence of the resident and his/her advocate.
- G. The resident and his/her advocate receive a copy of the written decision upon its completion. Paragraph G is consistent with ACA Standards 3-JDF-3C-18 and 3-JTS-3C-21.
- H. Notification of the right to appeal is written on the face of the decision and provided verbally when the resident receives the written decision. The resident is also advised of the appeal procedure. Paragraph H is consistent with ACA Standards 3-JDF-3C-21 and 3-JTS-3C-24.
- I. A copy of the written decision is placed in the resident's record in RICHIST. Paragraph I is consistent with ACA Standards 3-JDF-3C-18; 3-JTS-3C-21; 3-JDF-3C-19 and 3-JTS-3C-22.
- J. At any point in the process, the Major Discipline Reviewer may make a referral for clinical intervention. As a result of a finding of guilty, the Major Reviewer may impose the following sanctions:
1. A warning and/or discussion with the resident regarding the incident.
 2. A resident's participation in a restorative justice meeting with the person(s) who was adversely affected by the resident's actions. This may include reasonable restitution based on the resident's ability to pay and the value of the damaged property.
 3. Loss of a resident's points on one shift.
 4. Placing a resident in his/her room for a maximum of (1) hour.
 5. Extra chores, homework, book reports, facility and public assignments; for up to a maximum of five (5) days.
 6. Sending a resident to his/her room before "lights-out" but not earlier than 8 PM (limited to one night for each incident; or one hour before the resident's customary bedtime).
 7. Loss of a resident's points for one day.
 8. Loss of the second scheduled weekly visit or any special visit for one week.
 9. Loss of one unit level.
 10. Remanding a resident to his/her room for time periods specified below in conformance with DCYF Policy 1200.1307, Lock Up:
 - a. Physical assault on staff - Up to five (5) days
 - b. Physical assault on another resident - Up to five (5) days
 - c. Sexual assault on another resident - Up to five (5) days
 - d. Use of threats, words or gestures intended to provoke residents or employees - Up to two (2) days
 - e. Bullying (second offense) and/or extortion by resident perpetuated on another resident - Up to four (4) days
 - f. AWOL (Runaway) - Up to three (3) days
 - g. AWOL (Runaway) from closed unit: - Up to five (5) days
 - h. AWOL (Runaway) with resulting new charges - Up to five (5) days
 - i. Continued disobedience to lawful and reasonable commands of unit/facility employees - Up to two (2) days
 - j. Violation of trial home visits with resulting new charges - Up to five (5) days
 - k. Willful destruction of property - Up to four (4) days
 - l. Theft or stealing from employees or residents - Up to five (5) days

- m. Possession and use of marijuana and alcohol - Up to three (3) days
 - n. Possession and use of hard drugs - Up to five (5) days
 - o. Possession of a weapon – Up to five (5) days
 - p. Possession of institutional contraband, e.g., cigarettes, lighters, money, and other restricted or unauthorized items - Up to three (3) days
 - q. Selling and/or pushing drugs - Up to five (5) days
 - 11. Paragraph J is consistent with ACA Standards 3-JDF-3C-02 and 3-JTS-3C-02.
- K. Staff conduct and document room checks on each resident on Lock Up to assess their status in accordance with DCYF Policy 1200.1307, Lock Up.
- L. In conformance with DCYF Policy 1200.1308, Administrative Classification to Restrictive Status, if the Major Discipline Reviewer makes a recommendation to place a resident on Restrictive Status, he/she contacts the Superintendent or designee for approval.

Major Discipline Review Disposition and Appeal

Procedure from Policy 1200.1306: Major Discipline Review

- A. The disposition of the Major Review Process is documented in the Unit Log Book and the Unit Lock Up Book. The disposition of the Major Review Process is also provided in writing to the Resident and is a part of the Resident's permanent file in RICHIST. This is also documented in the Unit Log Book and the Unit Lock up Book. Paragraph A is consistent with American Correctional Association (ACA) Standards 3-JDF-3C-18; 3-JTS-3C-21; 3-JDF-3C-19; 3-JTS-3C-22; 3-JDF-3A-06; 3-JTS-3A-06; 3-JDF-3A-09 and 3-JTS-3A-09.
- B. Unit Staff check the Unit Log Book and the Unit Lock Up Book and education staff check the daily school notes at the beginning of each shift/school day to ensure consistent compliance with any Major Discipline Review decisions.
- C. Whether or not a resident appeals a Major Discipline Review decision, the Superintendent or designee reviews the Review disposition within seventy-two (72) hours and exerts a reasonable effort to conduct the review within twenty-four (24) hours of the decision. The purpose of such review is to determine:
 - 1. If the outcome is appropriate and to revise the outcome if inappropriate.
 - 2. Whether particular staff members are routinely or habitually initiating Major Discipline Review procedures in a manner or pattern which calls into question the appropriateness of the use of the Review procedures by such staff members.
 - 3. Paragraph C is consistent with American Correctional Association (ACA) Standards 3-JDF-3C-20; 3-JTS-3C-23; 3-JDF-3C-21; and 3-JTS-3C-24.
- D. If a resident requests an appeal to the decision(s) of a Major Discipline Review hearing, the Major Discipline Reviewer assists him/her.
- E. Any sanctions imposed as a result of a Major Disciplinary Hearing are stayed until the conclusion of the appeal process.
- F. The Superintendent or designee has the discretion to:
 - 1. Veto Behavior Report Sanctions.
 - 2. Veto Major Disciplinary Review hearing sanctions.
 - 3. Intervene at any time during a Major Disciplinary Review Process.
 - 4. Deny a resident's appeal.
 - 5. Decrease, but not increase, any sanction imposed and must state the reasons for the exercise of such discretion in writing on the relevant discipline papers/records.
- G. The Superintendent or designee notifies the resident in writing of the outcome of the appeal within twenty-four (24) hours of the resident's appeal. This decision is also recorded in RICHIST.
- H. The Superintendent's decision is documented in the Unit Log Book and the Unit Lock Up Book.
- I. Paragraphs D - H are consistent with ACA Standards 3-JDF-3C-20; 3-JTS-3C-23; 3-JDF-3C-21; 3-JTS-3C-24; 3-JDF-3A-06; 3-JTS-3A-06; 3-JDF-3A-09 and 3-JTS-3A-09.